

## **Minutes:**

### **Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel**

6-8 PM, Tuesday, August 14, 2018

#### **Panel Member attendance:**

- Attorney General Appointments: Jessica Brown, Geoffrey Jones, Etan Nasreddin-Longo, Chief Don Stevens
- Executive Director of VT Criminal Justice Training Council: Rick Gauthier
- Attorney General or designee: David Scherr
- Defender General or designee: absent
- Executive Director of State's Attorneys and Sheriffs Department or designee: James Pepper
- Chief Superior Judge: Judge Brian Grearson
- Commissioner of Corrections or designee: Lisa Menard, Monica Weeber
- Commissioner of Public Safety or designee: Major Ingrid Jonas, Lt. Gary Scott
- Commissioner of Department of Children and Families or designee: absent

#### **Welcome—introductions**

#### **Approval of Minutes**

Major Jonas proposes a correction: page 5, 4<sup>th</sup> paragraph—strike the last sentence of that paragraph.

So moved by Major Jonas, Chief Stevens seconds. Panel approves.

Lt. Scott moves passage of minutes. Major Jonas seconds. Panel approves the minutes. David abstains.

#### **Announcements—ways forward**

Rebecca Turner is unable to be here due to child care. Shela Linton is on vacation.

Etan: Tells panel about Christine's open letter to the panel. Tells panel that he responded quickly. Invites panel to email him to get copies of either.

Etan: Chief Stevens mentioned last meeting that we could do this report on a rolling basis as opposed to waiting to compile one big report.

Etan: the legislature isn't expecting anything imminently so we can take our time. Etan suggests that we write as we go, produce sections.

Etan volunteers himself to do the writing.

Lisa: do we intend to produce a rolling draft? Etan: yes, that's the idea, a rolling draft that enshrines the best ideas we have.

Etan: To be clear: no one will be submitting anything without a vote or without further ample commentary before a vote is taken.

Chief Stevens: I think the rolling draft is a smart way to go. But we also need to submit stuff, not just have an ongoing draft for years. It's probably better to submit something that is a whole for the consideration of the legislature so they pay attention and act. Though we could do both—at certain points submit then keep drafting.

The next hard deadline is January 2020. Rick points out that we should probably have something ready by November 2019 in order to allow the legislature to write legislation.

Panel agrees that Etan will be the writer of our rolling draft.

Major Jonas: to clarify, we are still starting with subsection 6(A) of Act 54 (the complaint process)? Panel agrees that it is.

### **Discussion concerning last month's discussion with Karen Richards**

Etan: Let's follow up on Judge Grearson's suggestions last month that we piggyback on HRC's request for more people. This could give them the capacity to serve as a centralized complaint clearinghouse.

Chief Stevens passes out notes that provide a guideline on how to mold Karen's presentation to fit into 6(A). (See attached).

Chief Stevens: With the data Karen gave us you could probably justify at least 1 if not 2 additional staff

Chief Stevens: I'm envisioning the HRC as a common reporting place. Then possibly feeding reports back out to those agencies who have their own mechanisms for dealing with complaints, but then also have a reporting mechanism back to HRC about outcomes.

Chief Stevens: There has to be some coordination between these departments so that there can be a bit of a check and balance against each other, with data being compiled as well as outcomes

Major Jonas: there may be issues with the centralized reporting idea due to laws requiring confidentiality with regard to VSP. Also complaints must be sent up the proper reporting chain within the VSP, failure to do so is an offense. This may have implications with regard to reporting data to a central clearinghouse

Rick: the landscape has changed a bit with recent legal changes requiring the council to review certain complaints, plus agencies must refer to council in certain situations. Council data and enforcement is all public information.

Chief Stevens: we can still leave agencies to do their own processes while HRC can be the clearing house.

Major Jonas: there are multiple ways to challenge racial profiling: for example someone could file a motion to suppress evidence gathered from an allegedly unlawful search, one that may be unlawful for constitutional reasons, and an agency finds out and pursues an internal investigation if it appears to be racially motivated.

Etan: Let's remember that Shela would argue that there is significant under-reporting and we have to take that into account—people may be uncomfortable making reports, we need to make that as easy as possible

Judge Grearson: this should be part of what we do: publicizing the ways to make a complaint and make it very clear how to do it. Perhaps also brainstorm ways to make complainants feel protected

Chloe White: the marketing piece is critical and presently inadequate. Under-reporting could be a result of lack of marketing. Karen (Executive Director of the HRC) is the only one who does any marketing but we need more.

Lisa: part of marketing has to be about how long process will take.

Etan: to sum up: we don't need to come up with another entity, we can give HRC the resources they need to do this job and structure it along the lines we have discussed.

Jessica: agreed that HRC can be the place and this seems like a good way to tackle the problem.

Chief Stevens: how much direction do we need to give to the HRC in terms of how they handle these complaints?

Jessica: we will need to involve Karen (Executive Director of the HRC) again to figure out what we need to do in terms of providing direction.

Monica: some of these ideas will require recommendations around changing statutes to accommodate the new reporting structure.

Chief Stevens: how will HRC handle a case overload if they don't get the people they need? They already can't fully handle all possible cases (where there doesn't appear to be a case they may not continue to pursue it).

It should be noted that Karen (Executive Director of the HRC) is retiring. Judge Grearson: Karen might actually be a great resource after she leaves HRC.

Etan: I think we (meaning I) should start writing in order to present an idea to Karen.

Etan: to David: Can the AG's office help us gather information about who has a public complaint process already, and what it consists of? David: yes I think we can help gather that information

Lt. Scott: we also need information on complaint processes from local agencies. Rick: yes, those processes are already mandated by law.

Jessica: I've been thinking about complaints about defense attorneys. We don't really have a mechanism for reporting on ourselves. Ingrid's comment made me realize that although we normally make our arguments within the judicial process there should be another way to register a complaint if there are people behaving in racially biased ways

Major Jonas: what about people who simply have no faith in our agency or our process? They will simply sue.

Chief Stevens: even if that's true the centralized reporting mechanism will at least help track where things went and what happened to them. This will help us get a picture of the system as a whole, see where the complaints are really coming from

Etan: this is partly why we need to learn about present processes to see how this centralized system might affect what is already there

Etan: as Shela would point out, many people don't understand what legal standards mean, this can be a barrier for people. Some discrimination may be unprovable even if you know it to be true. Legal standards can be unhelpful in these situations. Just because there isn't prima facie case doesn't mean nothing happened. Shela's point is that these standards don't capture the truth of what is happening.

Chief Stevens: nevertheless, capturing the data about complaints made will still let us know where problems are or may be, simply because of concentrations of complaints.

Etan: let's remember that we need to pull in Karen (Executive Director of the HRC) on this.

Major Jonas: when we learn about complaints processes in different agencies how do we know we will be gathering apples-to-apples comparisons? And some of the complaints won't be categorized as race-based complaints even if that could be a component. There is not sufficient standardization across state agencies.

Monica: it may take a lot of qualitative research to really capture what the current complaints encompass. But we may not need to solve these specific problems about standardization at this point, we can do the broad systems outline without doing this.

It may also be really hard to say exactly what the complaint standardization should look like at this point.

Etan: perhaps the fact that there isn't standardization isn't a bad thing—it may actually be a reflection of reality. Racism is protean and encompasses many forms.

Chief Stevens: perception of discrimination can be that person's reality but is it objective reality? That person's reality may still be deserving of deference.

Major Jonas: On the other hand some people may not realize they have been discriminated against, that won't be reported either.

Etan: I want to issue a public thanks to Chief Stevens. for the summary of HRC information, very good work. The panel agrees.

### **-Discussion of reducing racial disparity in the criminal justice system**

We will read this for next time. Each panel member should read the section(s) most relevant to their work.

### **-Scheduling**

September 11 is next meeting. The meeting will be in Barre, in the Milne Room in the Aldrich Public Library.

### **-Public Commentary**

None

### **-New Business**

None

### **The Meeting Adjourns**